

## § 26.17

submit a proposed order with any motion.

(c) *Responses to motions.* Within 10 days after receipt of any written motion, or within any other period as may be designated by the hearing officer, the opposing party shall respond to the motion and set forth any objections to the motion. Failure to file a timely response to the motion may constitute a party's consent to the granting of the motion. The moving party shall have no right to reply, except as permitted by the hearing officer.

(d) *Motions for extensions of time.* Either party may file a motion for extension. At the discretion of the hearing officer, a motion for an extension of time may be granted for good cause at any time, notwithstanding an objection or any reply to the motion consistent with the provisions of § 26.2(c)(5) and (7). The hearing officer may waive the requirements of this section as to motions for extensions of time.

(e) *Oral argument.* The hearing officer may order oral argument on any motion.

(f) *Motions for summary judgment.* (1) A party claiming relief or a party against whom relief is sought may timely move, with or without supporting affidavits, for summary judgment on all or part of the claim.

(2) Objections in the consideration of summary judgment motions or answers thereto based upon a failure to strictly comply with the provisions of Rule 56 of the Federal Rules of Civil Procedure may, at the discretion of the hearing officer, be overruled.

(g) *Motions for dismissal.* When a motion to dismiss the proceeding is granted, the hearing officer shall issue a determination and order in accordance with the provisions of § 26.25.

## DISCOVERY

### § 26.17 Prehearing conference.

(a) *Prehearing conference.* The hearing officer may, sua sponte or at the request of any party, direct counsel for all parties to confer with the hearing officer before the hearing for the purpose of considering:

(1) Simplification and clarification of the issues;

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(2) Stipulations and admissions of fact and of the contents and authenticity of documents;

(3) The disclosure of the names of witnesses;

(4) Matters of which official notice will be taken;

(5) Other matters as may aid in the orderly disposition of the proceeding, including disclosure of the documents or other physical exhibits that will be introduced into evidence in the course of the proceeding.

(b) *Recordation of prehearing conference.* The prehearing conference shall, at the request of any party, be recorded or transcribed.

(c) *Order on prehearing conference.* The hearing officer shall enter in the record an order that states the rulings upon matters considered during the conference, together with appropriate directions to the parties. The order shall control the subsequent course of the proceeding, subject to modifications upon good cause shown.

### § 26.18 Discovery.

(a) *General.* The parties are encouraged to engage in voluntary discovery procedures, which may commence at any time after an answer has been filed. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the hearing officer may order discovery of any matter relevant to the subject matter involved in the action. To be relevant, information need not be admissible at the hearing, if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. Each party shall bear its own expenses associated with discovery. Discovery may include:

(1) Requests for production of documents as set forth in § 26.19;

(2) Depositions as set forth in § 26.20;

(3) Written interrogatories as set forth in § 26.21; and

(4) Requests for admissions as set forth in § 26.22.